

WHY IS THE NEW ZEALAND GOVERNMENT STILL INVOLVED IN THE COOK ISLANDS' ADVICE TO THE SOVEREIGN?

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Since self-government, the relationship the Cook Islands has with New Zealand has evolved towards greater independence. An exception to this is the "six steps" procedure, through which the Cook Islands Prime Minister provides advice to the Head of State. This procedure acknowledges the capacity of the Cook Islands Government to advise the Sovereign, but doing so involves the New Zealand Prime Minister. It was designed to meet the Palace's concerns about receiving advice directly from the Cook Islands Prime Minister. Recent scholarly justification of the procedure prompted this fuller examination of the genesis of the six steps; approached through a political rather than legal lens. It reveals long and difficult negotiations to a compromise solution agreed by the Cook Islands and New Zealand in 1981 and by the Palace in 1982. The solution reached contrasts with the ability of Australian State Premiers to provide advice directly to the Crown, secured in negotiations leading to the 1986 Australia Acts and in the face of similar Palace concerns. Given the background, and the Cook Islands' longstanding discomfort with the requirement, it is remarkable that the six steps procedure has lasted. Amongst possible reasons, the procedure is consistent with New Zealand's reluctance to countenance further loosening of ties with the Cook Islands, with associated diminution of New Zealand power, while the Cook Islands remains in association with New Zealand. This article concludes that rather than accruing reasons for retention of the six steps procedure, it is time to move on.

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I INTRODUCTION

In 1965, when the Cook Islands gained self-government, the Queen in right of New Zealand remained as Head of State.¹ While initially, the Cook Islands and New Zealand retained some formal links, the "special relationship" between the Cook Islands and New Zealand has since evolved towards greater independence. This greater independence has been accompanied by significant development in the Cook Islands' international personality. It has been accepted as a member of major multilateral organisations (but not the United Nations). It is a party to bilateral and multilateral treaties. Since the 1990s, it has developed direct diplomatic relations with over 70 countries (including the United States, China, France, Japan and Commonwealth countries such as Australia and Canada, although not the United Kingdom).² The exception to this evolution is the 1982 "six steps" procedure by which the Cook Islands Prime Minister provides advice to the Sovereign.

This is curious. The issues on which the Cook Islands Prime Minister advises the Crown are the appointment of the Cook Islands Queen's (now King's) Representative and Royal honours.³ Cook Islands ministers are, by right, the source of advice to the Head of State on these matters. However, in negotiations from 1979 to 1982, the Governments of New Zealand and the Cook Islands developed the six steps procedure to meet Palace resistance to the Cook Islands Prime Minister (formerly Premier) providing advice directly to the Sovereign. The six steps procedure acknowledges the capacity of the Cook Islands Government to advise the Sovereign but accedes to the Palace's insistence on New Zealand Government involvement.

The Cook Islands Government finds the six steps procedure incompatible with its status. The New Zealand Government is either not inclined or unable to change it. Recent academic analysis of the Realm of New Zealand provides justification for the procedure.⁴ The six steps procedure was a political fix. This article questions its continued application by examining its genesis and questioning current commentary through a political, rather than a legal, lens.

1 Cook Islands Constitution Act 1964, sch 1 cl 2.

2 Key documents on the Cook Islands' status, and relationship with New Zealand, are the Cook Islands Constitution Act, including the Cook Islands Constitution and its amendments; "Exchange of Letters between the Prime Minister of New Zealand and the Premier of the Cook Islands concerning the Nature of the Special Relationship between the Cook Islands and New Zealand" [1973] 1 AJHR A10; and "Joint Centenary Declaration of the Principles of the Relationship between the Cook Islands and New Zealand" (11 June 2001). For a legal analysis of these and other matters see Alison Quentin-Baxter *Laws of New Zealand Pacific States and Territories: Cook Islands* at [34]–[41]. For a New Zealand view, see Ministry of Foreign Affairs and Trade *Cook Islands: Constitutional Status and International Personality* (May 2005).

3 Matters such as the Cook Islands' flag, seal and emblems, stamps, coins and coat of arms may also require consultation with the Palace from time to time.

4 Alison Quentin-Baxter and Janet McLean *This Realm of New Zealand: The Sovereign, the Governor-General, the Crown* (Auckland University Press, Auckland, 2017); and Alison Quentin-Baxter "The Cook Islands, Niue and Tokelau as Parts of the Realm of New Zealand" (2021) 52 VUWLR 579.

Part II of this article outlines the six steps and presents scholarly views. Part III discusses the negotiations: III(A) provides background to the first formal statement of the Palace's position in December 1978; III(B) covers the negotiations to agreement on the six steps between New Zealand and the Cook Islands in May 1981; and III(C) discusses the further negotiations to secure Palace agreement to the six steps in April 1982. Part IV comments on the contemporary rationale for the six steps and possible reasons for its longevity while other links with New Zealand have been negotiated away.

II THE SIX STEPS AND ACADEMIC COMMENTARY

Constitutional scholar Tony Angelo has posed the question:⁵

What is the nature of the Realm of New Zealand, and how is the relationship of the states (other than the State of New Zealand) to the Governor-General and the Sovereign managed?

This article sheds light on part of Angelo's question. Communication with the Palace may seem inconsequential, the six steps a small matter, insignificant in the broader relationship between the Cook Islands and New Zealand. However, the procedure outlines the Governor-General's only practical role with respect to the Cook Islands: to convey (on the advice of the New Zealand Prime Minister) the advice of the Cook Islands Prime Minister to the Crown.⁶ Moreover, it is an anomaly: the only matter within the exclusive competence of the Cook Islands Government in which the New Zealand Prime Minister has a formal role. How the six steps procedure came about, and why it still exists, is a question worth exploring.

To do so is not easy. The six steps procedure is not publicly available. The New Zealand Cabinet Office supplied a copy to the author in response to a request under the Official Information Act 1982.⁷ The Ministry of Foreign Affairs and Trade kindly provided access to its files, but a request to the Ministry for papers covering the negotiations, so these could be cited, produced heavily redacted material.

The six steps procedure was developed in the context of the Cook Islands' changes to its Constitution, initiated in 1979 and completed in 1982.⁸ The Cook Islands Government had found its

5 Tony Angelo "The Letters Patent" [2007] NZLJ 5 at 6. The Realm of New Zealand comprises New Zealand, the Cook Islands, Niue, Tokelau and the Ross Dependency.

6 Quentin-Baxter "The Cook Islands, Niue and Tokelau as Parts of the Realm of New Zealand", above n 4, at 590–591; Quentin-Baxter and McLean, above n 4, at 113; Alex Frame "Associated Statehood and the Cook Islands" (paper presented to the Cook Islands Law Society, Rarotonga, March 2018) at 8; and Quentin-Baxter, above n 2, at [27].

7 6-Step Procedure for New Zealand/Cook Islands to Advise the Queen (obtained under Official Information Act 1982 request to the Cabinet Office, Department of the Prime Minister and Cabinet).

8 Cook Islands Constitution Amendment (No 10) Act 1981–1982 (CK), and the preceding Cook Islands Constitution Amendment (No 9) Act 1980–1981 (CK).

relationship with New Zealand to be a constraint on its international recognition. At the heart of this relationship is the post-decolonisation extension of New Zealand citizenship to the Cook Islands. The Cook Islands Government had no wish to jeopardise this, but as Cook Islands former minister and diplomat Iaveta Short explained:⁹

In essence, we wanted to upgrade our political status so that we were not seen as subservient to New Zealand. We did not wish to be seen as simply a 'state' within New Zealand—ours was not the position of the various Australian states and we wanted the Constitution to reflect our sovereignty.

The proposed constitutional changes included separating the role of representing the Sovereign from the role of representing New Zealand and establishing the office of Queen's Representative in the Cook Islands, who would be appointed by the Sovereign. New Zealand supported this change, and the Palace appears to have concurred.

The question was who was to advise the Sovereign on the appointee, and occasionally on other matters, and how this should be done. The answer was the six steps procedure as follows:

- (1) Advice to Her Majesty on matters within the exclusive competence of the Cook Islands Government should be tendered by the Cook Islands Government;
- (2) The Prime Minister of the Cook Islands would discuss informally the nature of such advice with the Prime Minister of New Zealand before the advice is tendered;
- (3) After this discussion, the Prime Minister of the Cook Islands would forward the advice to the Queen's Representative in the Cook Islands;
- (4) The Prime Minister of the Cook Islands would then provide the Prime Minister of New Zealand with a copy of the advice;
- (5) The Prime Minister of New Zealand would advise the Governor-General that advice from the Cook Islands Government to Her Majesty the Queen will be forwarded to the Governor-General by the Queen's Representative in the Cook Islands for onward transmission to the Palace;
- (6) The Queen's Representative would send the advice to the Governor-General, who would forward it to Her Majesty.

New Zealand constitutional scholars Alison Quentin-Baxter and Professor Janet McLean, in their work *This Realm of New Zealand*, justify the six steps. Quentin-Baxter has augmented this with more

9 Iaveta Short *False Start in Paradise* (Moana Publishing, Rarotonga, 2020) at 169.

detail on the relationship of the Cook Islands to the Sovereign and the New Zealand Governor-General.¹⁰

According to Quentin-Baxter and McLean, the six steps procedure rests on the principle that the Sovereign "must be able to look to a single adviser in respect of each [realm]",¹¹ and indeed, we are told this is the case. Drawing a parallel with two federal states (although the Realm of New Zealand is not a federation), they assert that, despite the Sovereign also being represented by lieutenant governors in Canada and by governors in Australia, "the Sovereign now acts only on the advice of the Prime Minister of Canada or of Australia".¹² Quentin-Baxter and McLean cite a 1970 letter from the Queen's Private Secretary, Sir Philip Moore, suggesting that Moore's rationale for this practice was that the states and provinces were not "sovereign independent countries" but they dismiss this as a historical basis for the principle that the Sovereign is entitled to one source of advice.¹³

This argument is puzzling. As this article discusses, the assertion about Australian states appears to be incorrect. The channel of communication in the Canadian case is not analogous to the Cook Islands' situation, as powers have been devolved to the Governor-General.

There are exceptions within the United Kingdom itself to this requirement that advice must come solely from one source, and that the source must be a sovereign independent country. Within devolved areas, mainly public appointments, the First Minister and Deputy First Minister (acting jointly) of Northern Ireland and the First Minister of Scotland advise the King directly. However, in Wales, advice is split between the Secretary of State for Wales and the First Minister of Wales.¹⁴

As Quentin-Baxter and McLean explain, there is a second important principle: "the Head of Government in a self-governing state like the Cook Islands ... has the right to advise the Sovereign directly on a matter relating solely to that state".¹⁵ The New Zealand position on this is longstanding and reflects, for example, 1969 advice to New Zealand officials by Quentin-Baxter (husband of Alison Quentin-Baxter) that "the Cook Islands Government has a right of direct access to the

10 Quentin-Baxter and McLean, above n 4. Alison Quentin-Baxter was responsible for the report that formed the basis of the 1983 Letters Patent: see Alison Quentin-Baxter *Review of the Letters Patent 1917 Constituting the Office of Governor-General of New Zealand: Report* (Cabinet Office, Wellington, 1980).

11 Quentin-Baxter and McLean, above n 4, at 110.

12 At 110.

13 At 111.

14 Email from David Torrance to Caroline McDonald (14 December 2024). For more detail, see David Torrance *Introduction to devolution in the United Kingdom* (House of Commons Library, CBP8599, 21 May 2024); and David Torrance *The royal prerogative and ministerial advice* (House of Commons Library, CBP9877, 8 July 2024). For a discussion of the risk of Westminster "pulling rank" on the Scottish Government, see Paul Scott "The Crown, Consent and Devolution" (2024) 28 Edin LR 61 at 80–84.

15 Quentin-Baxter and McLean, above n 4, at 111.

Palace".¹⁶ He commented that "the routing through the New Zealand Vice-regal channel is in its origin purely a matter of courtesy"¹⁷ but added "the practice of routing communications through New Zealand channels could well attain the character of a constitutional convention".¹⁸ It is important to bear in mind that this advice was at a time when the appointment of the representative of the Head of State was made by the Governor-General on the advice of a New Zealand Minister. It was prior to the separation of the roles of New Zealand Representative and representative of the Head of State, prior to the development of the six steps, and prior to the review of the Letters Patent Constituting the Office of Governor-General.

Quentin-Baxter and McLean then turn their attention to reconciling the two principles they have identified. According to Quentin-Baxter and McLean, "Her Majesty cannot be expected to determine the allocation of responsibilities as among the different parts of what remains a single realm".¹⁹ Thus:²⁰

... the Sovereign needs the assurance of her New Zealand Prime Minister that the matter on which she receives advice from the Prime Minister of the Cook Islands is indeed within the exclusive competence of the Cook Islands government.

They explain that while the Cook Islands has its own Queen's Representative, the New Zealand Governor-General, acting on the advice of the New Zealand Prime Minister, "plays a part in transmitting to the Sovereign the advice of the Prime Minister of the Cook Islands on appointments to that office",²¹ thereby implicitly providing that assurance. Quentin-Baxter described these as "new constitutional conventions".²²

This too seems somewhat curious. The matters within the exclusive competence of the Cook Islands on which advice is required are clear. If a New Zealand Government assurance was considered desirable, a note to the Palace identifying the matters and covering current and future cases could be supplied.

16 Alex Frame "The external affairs and defence of the Cook Islands – the 'Riddiford clause' considered" (1987) 17 VUWLR 141 at 148.

17 At 148.

18 At 148.

19 Quentin-Baxter and McLean, above n 4, at 111.

20 Quentin-Baxter "The Cook Islands, Niue and Tokelau as Parts of the Realm of New Zealand", above n 4, at 595.

21 Quentin-Baxter and McLean, above n 4, at 113.

22 Quentin-Baxter "The Cook Islands, Niue and Tokelau as Parts of the Realm of New Zealand", above n 4, at 594.

Quentin-Baxter goes on to explain that the New Zealand Prime Minister has no "ministerial responsibility for the substance of the recommendation to the Sovereign".²³ But the six steps procedure goes beyond an assurance that the matter is within the competence of the Cook Islands. It includes an informal discussion with the Prime Minister of New Zealand on the substance before the advice is tendered. According to Quentin-Baxter, that discussion may include a remarkably broad-ranging interrogation of the suitability of the nominee for Queen's (now King's) Representative (and, presumably, for a Royal honour). The New Zealand Prime Minister:²⁴

... may legitimately go into the qualifications, experience and good character of the person proposed to be appointed, and even into the questions whether the appointment is likely to be generally acceptable in the Cook Islands and is consistent with the partnership between the Cook Islands and New Zealand.

The objective is "to avoid ... embarrassment to the Sovereign".²⁵ This is not elaborated upon further, so it is unclear what additional expertise the New Zealand Government is qualified to provide nor how any disagreement might be resolved.

Quentin-Baxter also commented briefly on the negotiations leading to the six steps, asserting that the Queen's household was "quick to recognise the implications of the Cook Islands Constitution",²⁶ and we are told the Cook Islands and New Zealand were "able to agree" on the six steps,²⁷ suggesting a rather more rapid and benign process than was the case.

Andrew Townend has said (citing earlier work by Quentin-Baxter) that "the procedure is followed ostensibly to ensure that the Queen does not get different advice from different parts of her realm" but added, as suggested by his use of the word "ostensibly", that "it also hints at an underlying paternalism on the part of the New Zealand Government".²⁸

More recently, Wiliame Gucake argued that the constitutional arrangements between the Crown and the Cook Islands in the context of the Realm of New Zealand engendered a subordination of the Cook Islands to New Zealand. He concluded that while "there is arguably merit in having consultation

23 At 595.

24 At 595.

25 At 595–596.

26 At 594.

27 At 594.

28 Andrew Townend "The Strange Death of the Realm of New Zealand: the Implications of a New Zealand Republic for the Cook Islands and Niue" (2003) 34 VUWLR 571 at 590.

in the tendering of advice ... the overview of the New Zealand government in the process undermines the statehood of the Cook Islands".²⁹

The Cook Islands Government raises the issue periodically. Former minister Iaveta Short has commented:³⁰

New Zealand has taken the position that the Queen's Representative is under the Governor General of New Zealand and this is reflected ... in the six step procedure ... which involved both the New Zealand Prime Minister and the Governor General in the process.

He suggested it was time to develop a direct link with the Palace.

Unlike other aspects of the Cook Islands' status and its relationship with New Zealand and other states, which have all substantially evolved over the last 40 years, this arrangement remains unchanged. The puzzle is why this is the case.

III THE NEGOTIATIONS

Difficulties with Palace acceptance of direct advice from the Cook Islands Government emerged in the post-colonial period, from 1965 to 1979. From 1979 to 1981, following advice that the Cook Islands intended to change its constitution, the six steps were negotiated between New Zealand and the Cook Islands to meet Palace concerns about advice being provided directly. From 1981 to 1982, New Zealand sought to secure Palace agreement to the six steps.

A Background: 1965–1979

When the Cook Islands developed its constitution, the Cook Islands Assembly decided that the Queen in right of New Zealand should remain as the Cook Islands' Head of State. It decided one person would represent both the Queen in the Cook Islands and the New Zealand Government.³¹ The Cook Islands' constitutional advisers could see potential issues with this as the representative "weighs [their] duties under the Constitution to act on the advice of [their] Cook Island[s] Ministers and [their] responsibilities to the New Zealand Government".³² There was no expectation on the part of the advisers that these interests would (or should) be aligned. The appointment of "High Commissioner" was to be made by the Governor-General on the recommendation of the New Zealand minister

29 Wiliame Iupeli Gucake "The Cook Islands within the Realm: A Storm Cloud with no Rain?" (2021) 26 CLJP/JDCP 11 at 38–39. Gucake discusses the implications of the convention that the Governor-General acts only on the advice of the Prime Minister of New Zealand: at 36–38. Interestingly, this does not seem to be an argument that was deployed in the negotiation of the six steps procedure.

30 Short, above n 9, at 269–270.

31 Cook Islands Constitution Act, sch 1 cl 2.

32 CC Aikman "Recent Constitutional Changes in the South-West Pacific" in *The New Zealand Official Yearbook 1968* (Department of Statistics, Wellington, 1968) at ch 50.

responsible for matters concerning the Cook Islands and after consultation with the Premier of the Cook Islands.³³

In perhaps a sign of things to come, the Palace was displeased. Sir Michael Adeane, Private Secretary to the Queen, had no objection to the appointment of a High Commissioner in the Cook Islands to represent the Queen but stated any such appointment should be made by Her Majesty on the advice of her New Zealand ministers, and that the Cook Islands Constitution Bill, setting out post-colonial arrangements, should be amended accordingly.³⁴

It was not amended. The then-New Zealand Resident Commissioner, AO Dare, served as High Commissioner for a few months, followed by the appointment of a New Zealand former Department of Island Territories official, LJ Davis. As anticipated, issues soon arose.³⁵ In particular, the Cook Islands Cabinet was unhappy that the High Commissioner received copies of its minutes and papers, including those related to issues that involved negotiation with New Zealand.³⁶

In 1975, the inadequacies of the arrangement led to the Chief Justice of the Cook Islands (New Zealander Gaven Donne) assuming the role of High Commissioner, representing the Queen. New Zealand appointed a diplomat as a separate New Zealand Representative in the Cook Islands (Graeme Ammundsen).

It is not quite correct to say, as Quentin-Baxter states, that prior to the proposal that the Queen's Representative be appointed by the Sovereign:³⁷

... there had been no reason to look beyond the recognised constitutional convention that the Prime Minister of New Zealand advises the Sovereign on matters relating to any part of the Realm of New Zealand.

33 Cook Islands Constitution Act, sch 1 cl 3(2).

34 Letter from Bernard Fergusson (Governor-General) to JR Hanan (Minister of Island Territories) (8 September 1964), Archives New Zealand, ABHS 6978 M85/1/19 part 5 R914900.

35 David J Stone "Self Rule in the Cook Islands: The Government and Politics of a New Micro-state" (PhD thesis, Australian National University, 1971) at 299–327.

36 At 236.

37 Quentin-Baxter "The Cook Islands, Niue and Tokelau as Parts of the Realm of New Zealand", above n 4, at 594.

In fact, issues had arisen on more than one occasion regarding the Cook Islands' communication with the Palace prior to this, for example, concerning coinage in the early 1970s. These early concerns with a New Zealand Government role meant the Cook Islands was given:³⁸

... informal assurances ... by the New Zealand Government that the use of the New Zealand Governor-General as the channel of communication to The Palace did not mean that New Zealand Ministers would involve themselves in the substance of advice tendered through that channel by Cook Islands Ministers on matters affecting the Cook Islands.

Matters came to a head in 1978 when High Commissioner Gaven Donne, who firmly believed he was entitled to communicate directly with the Palace, sought the Queen's approval for a change of flag. The Palace objected. Although there had been earlier direct contact (about postage stamps), this time, the Palace asked that the "formal New Zealand channel" be used.³⁹

This reaction occurred in a period when the Cook Islands Government, in consultation with New Zealand, was actively seeking to achieve recognition of its international personality and independence from New Zealand. Driven by the Cook Islands Premier, Thomas Davis, who took office in 1978, the significance of aspects of the relationship were being negotiated with New Zealand, agreed and clarified. Consistent with the views of the time, New Zealand Foreign Affairs officials initially responded with puzzlement and dismay to the response from the Palace. Handwritten comments included "Do the Palace have to be stuffy about this question?",⁴⁰ "The Palace's interpretation is astray; it reads far greater substance into the requirement that the Governor-General be the channel of communication than is warranted",⁴¹ and "I hope this wretched fellow has not shot a hole in the constitutional position of the Cooks vis a vis NZ as we understand it".⁴²

Nevertheless, the Palace response to this approach about the Cook Islands flag did raise the stakes. Consistent with Quentin Quentin-Baxter's 1969 advice, the New Zealand Government depicted this as simply a procedural matter. The New Zealand Representative was asked to explain to the Cook Islands Government that "the whole issue is one of form, not substance".⁴³ The New Zealand

38 Submission from the Secretary of Foreign Affairs to the Minister of Foreign Affairs "Cook Islands: Possible Changes to the Constitution" (28 January 1980), Archives New Zealand, ABHS 950 306/4/2 part 3 R20766054.

39 Telegram from London to Wellington "Cook Islands: Head of State Functions" (30 October 1978), Archives New Zealand, ABHS 950 31/20/1/13 part 1 R22473725.

40 Telegram from London to Wellington, above n 39 (unsigned annotation).

41 Initialled undated handwritten note (probably January 1979) Archives New Zealand, ABHS 950 31/20/1/13 part 1 R22473725.

42 Initialled undated handwritten note, above n 41 (emphasis in original).

43 Telegram from Wellington to Rarotonga "Cook Islands: Head of State Functions" (7 December 1978), Archives New Zealand, ABHS 950 31/20/1/13 part 1 R22473725.

Government and Cook Islands Government had the same status in terms of direct access to the Sovereign. There was no question that New Zealand ministers would intervene.⁴⁴ The convention was that "all approaches to the Queen in right of New Zealand are made through the Governor-General, or with the Governor-General's knowledge and consent",⁴⁵ and the Palace had suggested that this should continue whether the advice came from the Cook Islands or New Zealand Government. The Cook Islands authorities were told:⁴⁶

... as a matter of formality or courtesy, it would be greatly appreciated if the Cook Islands authorities would use the channel that the New Zealand Government uses, and to which the Palace authorities are accustomed.

The New Zealand Representative (now diplomat Brian Absolum) was unconvinced:⁴⁷

Why not modify or disregard a convention that was presumably established before the Cook Islands achieved self-government? In what way is it more courteous or more formal for the Cook Islands to approach its Sovereign through the New Zealand Governor-General rather than directly?

The response was that New Zealand now agreed with the Palace that the routing of formal advice to the Sovereign through the Governor-General "reflects the constitutional provision that the Queen in right of New Zealand is the Head of State of the Cook Islands"⁴⁸ but, it was emphasised, there was no suggestion the channel of communication should be the New Zealand Government.

The Palace did not let matters rest. The Queen's Private Secretary PBC (Philip) Moore wrote on 29 December 1978 to the Governor-General, formally setting out his objections to direct communication by Cook Islands ministers. Moore wrote:⁴⁹

The Queen, as a constitutional Monarch, can only act on the advice of Her Majesty's Ministers—and these must be the Ministers of a sovereign independent country. For example, it is not possible for The Queen to act on the advice of the Premier of New South Wales; nor on the advice of the Premier of British Columbia; nor on the advice of the Premier of St Vincent (an Associated State). The Queen of Australia

44 Telegram from London to Wellington, above n 39 (unsigned annotation).

45 Telegram from London to Wellington, above n 39 (unsigned annotation).

46 Telegram from London to Wellington, above n 39 (unsigned annotation).

47 Telegram from Rarotonga to Wellington "Cook Islands: Head of State Functions" (7 December 1978), Archives New Zealand, ABHS 950 31/20/1/13 part 1 R22473725.

48 Telegram from Wellington to Rarotonga "Cook Islands: Head of State Functions" (13 December 1978), Archives New Zealand, ABHS 950 31/20/1/13 part 1 R22473725.

49 Letter from PBC Moore (Her Majesty's Private Secretary) to Keith Holyoake (Governor-General) (29 December 1978), under cover of memorandum from the New Zealand High Commission, London to Secretary of Foreign Affairs, Wellington "Cook Islands: Head of State Functions" (4 January 1979), Archives New Zealand, ABHS 950 31/20/1/13 part 1 R22473725.

can only act on the advice of the Prime Minister of Australia; The Queen of Canada can only act on the advice of the Prime Minister of Canada; and The Queen of the United Kingdom can only act on the advice of the Prime Minister of the United Kingdom.

Since the Cook Islands are not a sovereign independent country, it is not possible for The Queen to act on the advice of the Premier of the Cook Islands and Her Majesty can only act in this case on the advice of her New Zealand Ministers. In practice this means that a submission from the Premier of the Cook Islands must come through New Zealand Ministers and the Governor-General to The Queen. I am sure you will agree that we could never allow a situation in which the Premier of the Cook Islands tendered advice direct to the Queen. Once we let this happen, there would be an obvious danger of The Queen approving a submission from the Cook Islands which involved policy unacceptable to the New Zealand Government.

New Zealand (and the Cook Islands) did not accept the Palace's depiction of the Cook Islands' status nor its implications. However, rather than debating this, New Zealand officials' (and legal advisers') attention turned to meeting the Palace's insistence on a single source of advice, which New Zealand saw as the real issue in question, and to addressing the practical concerns that might lie behind this assertion.

Before turning to how that insistence was accommodated, a comment on the examples cited by Moore is important, especially as Quentin-Baxter and McLean also give the comparison with Australia and Canada in support of their justification of the six steps. While Canada was engaged in negotiations, which led to its own constitutional reform of 1982, the focus was on the repatriation of powers to the Governor General. The Canadian Governor General is the source of advice to the Crown; lieutenant governors are subordinate to and appointed by the Governor General.⁵⁰ Saint Vincent is similarly a red herring. It was granted "associated statehood" in 1969 (and became independent in 1979), but this associated statehood had powers retained by the United Kingdom, unlike the Cook Islands with New Zealand, and for this reason, the status was not recognised as such by the United Nations.

On the other hand, Australia is an interesting comparison. At the same time as negotiations were taking place that led to the six steps, Australia was negotiating changes in relations between the States and the Crown and British Government, which led to the Australia Acts 1986. Although the Cook Islands was not part of a federal state, Anne Twomey has revealed similarities in the Palace's position on the Australian States and on the Cook Islands, and there are parallels in the solutions proposed and, in Australia's case, rejected.

Advice from Australian premiers was not, and is not, routed to the Sovereign via the Prime Minister of Australia. Prior to the Australia Acts 1986, as Anne Twomey explains, Commonwealth prime ministers advised the Sovereign directly, while the state premiers tendered advice through the

50 Anne Twomey *The Australia Acts 1986: Australia's Statutes of Independence* (The Federation Press, Sydney, 2010) at 36.

British Foreign Minister. In negotiations on the new arrangements encapsulated in the Australia Acts 1986, the Commonwealth view was that it alone should advise the Queen in relation to matters concerning Australia. The States' view was that they had an existing independent relationship with the Crown as parts of the federal system, and they refused to be subordinated to the Commonwealth Government as the price for independence from the United Kingdom Government. The Palace's position was that the Queen should not be put in the position of receiving conflicting advice from Australian ministers and, not being sovereign independent countries, Australian States were not competent to offer formal advice to the Queen.⁵¹ This debate applied to the appointment of state governors. While only two States recommended Imperial honours through British ministers, the solution reached was that advice on honours would also be conveyed directly.⁵² New Zealand officials rightly did not see the Australian States as constitutionally analogous to the Cook Islands, but Palace officials were no doubt aware of the precedent the Cook Islands might set for its position on negotiations on the Australian States.

The New Zealand authorities dealt directly with the Palace. However, the Palace's position appears consistent with the British Government's views and interests. The British did not vote in favour of the United Nations 1960 Declaration on Decolonisation,⁵³ nor the resolution passed the following day on factors to be taken into account in determining self-government.⁵⁴ As mentioned, the British attempt at free association with five of its Caribbean non-self-governing territories failed to meet the threshold for United Nations endorsement.⁵⁵ In 1986, the United Kingdom withdrew from cooperation with the United Nations Special Committee on Decolonisation, the C-24.

From 1999, the relationship of the British with the United Nations became more accommodating.⁵⁶ However, following the first United Nations decolonisation seminar to be held in a British territory, in Anguilla in 2003, the Parliamentary Under-Secretary of State at the Foreign Office (Bill Rammell) advised the Select Committee on Foreign Affairs that, although some territories were pressing for greater powers, "the concept of free association ... does not sit easily with our over-

51 At 161–162.

52 At 175–176.

53 *Declaration on the Granting of Independence to Colonial Countries and Peoples* GA Res 1514 (1960).

54 *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter* GA Res 1541 (1960).

55 William C Gilmore "Requiem for associated statehood?" (1982) 8 Rev Int Stud 9 at 16–17.

56 Ian Hendry and Susan Dickson *British Overseas Territories Law* (2nd ed, Hart Publishing, Oxford, 2018) at 272–291.

riding responsibility".⁵⁷ In January 2004, Anguilla (and presumably others) were notified that free association was not on offer.⁵⁸ Although, in the case of Australia, the British Government appears to have seen the Palace's desire for a single source of advice as compatible with advice direct from States,⁵⁹ given this background, it was unlikely to have been sympathetic in the Cook Islands case.

B The Negotiation of the Six Steps, 1979–1981

In February 1979, Premier Thomas Davis formally advised the New Zealand Prime Minister Robert Muldoon that the Cook Islands Government proposed to review the Cook Islands Constitution.⁶⁰ In December 1979, the Cook Islands confirmed that the proposed changes included the separation of the functions of the "High Commissioner" and the appointment of the Cook Islands' Queen's Representative by the Queen. The Cook Islands Government saw the question of who made the appointment and on whose advice as closely linked to the channel of communication. The Cook Islands' view was that it should be able to communicate directly with the Palace. New Zealand officials sought to downplay its significance; New Zealand ministers were not involved in the substance of the advice, and the use of the New Zealand Governor-General was simply a matter of form. When faced with continued Cook Islands resistance, officials pushed back with a threat that could only refer to the sensitive issue of New Zealand citizenship:⁶¹

It was pointed out to ... [the Cook Islands delegation] that given these assurances that the use of the Governor-General channel was a matter involving form not substance, it was difficult to understand the objection of the Cook Islands Government to the use of that channel unless the objection reflected a desire for a more extensive change in the constitutional relationship between the two countries.

In July 1980, the New Zealand Government informally approached the Palace through its High Commission in London to explain developments, gauge the reaction and seek guidance on how a formal approach should be made. The Cook Islands had by now agreed to communication by way of the New Zealand Governor-General. What of the involvement of New Zealand ministers?

The content of New Zealand's discussions with the Queen's Private Secretary, William Heseltine, has been withheld under the Official Information Act. However, it can be assumed the Palace view

57 Letter from Bill Rammell (Parliamentary Under-Secretary of State, Foreign and Commonwealth Office) to Donald Anderson (Chairman of the Select Committee on Foreign Affairs) regarding the United Kingdom Overseas Territories: Nature of the Relationship (27 October 2003).

58 Government of the Virgin Islands "Written evidence to the Public Administration and Constitutional Affairs Committee on the Status of the United Kingdom's Overseas Territories in the 21st Century inquiry" (SOT64, September 2023) at 5.

59 Twomey, above n 50, at 141–176.

60 Letter from Thomas Davis (Premier of the Cook Islands) to Robert Muldoon (Prime Minister of New Zealand) (26 February 1979), Archives New Zealand, ABHS 950 306/4/2 part 3 R20766054.

61 Secretary of Foreign Affairs, above n 38.

remained consistent with that expressed earlier by Heseltine's colleague Moore and with points made to the Australians about Palace preferences.

By October 1980, with an apparent resolution in sight, discussions with the Palace were conveyed to the Cook Islands Government by the New Zealand Representative in Rarotonga, Lindsay Watt.⁶² Quentin-Baxter states that the "Queen's household ... was quick to recognise the implications of the Cook Islands constitution" and that "their" view (conveyed by Watt) was that, as the Cook Islands had a sovereign parliament with plenary powers and no legal fetters on the exercise of those powers:⁶³

... the Cook Islands Government must be entitled to tender advice to the Queen on matters wholly within its competence without any substantive involvement on the part of New Zealand Ministers.

This misrepresents the Palace's position. The confusion may have arisen because Quentin-Baxter quotes, as the Palace's position, an extract from Watt's letter in a letter from Thomas Davis (now termed Prime Minister, not Premier) to Robert Muldoon. The attribution is ambiguous, but in fact the extract quoted was the New Zealand position, not the Palace view. Hence, what New Zealand officials described as "lengthy and difficult discussions" with the Cook Islands Government and its constitutional advisers continued.⁶⁴ However, accepting "it would be very difficult to shift the Palace authorities"⁶⁵ back in the Cook Islands, in early December 1980, the Cook Islands Government and its constitutional advisers reluctantly produced a draft six steps procedure for New Zealand consideration.

Conveying the draft six steps to New Zealand, Thomas Davis pointedly drew attention to the Imperial Conferences of the 1920s and 1930s and the "long struggle of some of the original members of the Commonwealth ... to gain recognition of their new status within the Empire, and more broadly, in the international community".⁶⁶ He observed that "acceptable solutions were found by Governments conscious of the need to respond to an evolving situation and the wish to preserve the essential features of the new Commonwealth".⁶⁷ He noted the Palace's position that "constitutional advice reaching the Queen should come only from a fully sovereign government of a realm of which

62 Quentin-Baxter "The Cook Islands, Niue and Tokelau as Parts of the Realm of New Zealand", above n 4, at 594.

63 At 594, citing Letter from the New Zealand Representative in the Cook Islands to the Attorney-General of the Cook Islands (28 October 1980).

64 Telegram from Wellington to London "Cook Islands: Constitutional Amendments: Representative of the Head of State" (24 August 1981), Archives New Zealand, ABHS 950 301/4/2 part 4 R20766055.

65 Telegram from Geneva to Wellington "Cook Islands: Constitutional Amendments: Representative of the Head of State" (7 August 1981), Archives New Zealand, ABHS 950 301/4/2 part 4 R20766055.

66 Letter from Thomas Davis (Premier of the Cook Islands) to Robert Muldoon (Prime Minister of New Zealand) (8 December 1980), Archives New Zealand, ABHS 950 306/4/2 part 4 R20766055.

67 Telegram from Wellington to London (24 August 1981), above n 64.

Her Majesty is Head of State".⁶⁸ His discomfort with the involvement of the New Zealand Government in the six steps and the Palace's position was plain, but:⁶⁹

[W]e have been informed that if the New Zealand Government comes to an arrangement with the Cook Islands Government on matters within the competence of the Cook Islands, under which the New Zealand Government would accept such advice without question, then such an arrangement would meet the requirements of Her Majesty's advisers. They would then "not think it necessary to probe too deeply into the arrangements reached".

In conveying the six steps to their Minister for approval, New Zealand officials confirmed that the channel of communication "provides a satisfactory accommodation of the interests of the Cook Islands, New Zealand and the Palace".⁷⁰ As explained to the Minister, the six steps provided for "some expression of Cook Islands aspirations to have a channel of communication with the Palace that is as free as possible from the involvement of the New Zealand Government".⁷¹ The Cook Islands had accepted that the Governor-General of New Zealand would be the channel of communication, although this had not been its initial preference. The Minister was reminded that the Cook Islands had been assured that New Zealand ministers do not involve themselves in the substance of advice, but Cook Islands ministers wanted this "clearly recognised".⁷² Reflecting this, officials explained that advice goes from the Premier to the Queen's Representative before formally advising the New Zealand Prime Minister and the advice would be conveyed from the Queen's Representative to Her Majesty without going through the hands of New Zealand ministers.

Interestingly, however, the advice to the Minister also articulated the question of New Zealand's interests. These were:⁷³

... protected ... by the provision that the Premier shall informally consult with the Prime Minister on the nature of the advice before submitting the advice to The Queen's Representative, as well as later informing the Prime Minister of the advice once the advice has been submitted to The Queen's Representative.

68 Telegram from Wellington to London (24 August 1981), above n 64.

69 Telegram from Wellington to London (24 August 1981), above n 64.

70 Submission from the Secretary of Foreign Affairs to the Minister of Foreign Affairs "Cook Islands: Channel of Communication with the Palace" (13 May 1981), Archives New Zealand, ABHS 950 306/4/2 part 4 R20766055.

71 Secretary of Foreign Affairs, above n 70.

72 Secretary of Foreign Affairs, above n 70.

73 Secretary of Foreign Affairs, above n 70.

Prime Minister Muldoon and Davis agreed to the arrangement on 10 June 1981.⁷⁴ The New Zealand High Commission in London was asked to advise the Palace that agreement had been reached. Although Heseltine's response has not been released, the New Zealand Government's exasperation with it is evident. The response to London points out that "the principal focus of the procedure ... is directed towards satisfying what we saw to be the major concerns of the Palace".⁷⁵ The telegram spelt out how it met Palace concerns but also why it did not meet the Palace demand that New Zealand ministers take responsibility for the substance of the advice:⁷⁶

The Palace can be confident, therefore, that when advice reaches Her Majesty under the procedure, the NZ Prime Minister has agreed: (A) that his is advice tendered properly by Cook Islands Ministers: (B) that this advice does not conflict with advice tendered by NZ Ministers: and (C) that the advice does not impinge upon New Zealand's vital concerns and so will not be subject to subsequent challenge. To the extent of these propositions, therefore, we accept that the NZ Prime Minister is responsible for the advice reaching the Queen under the procedure. ... This exercise is based on the understanding that the advice to be tendered to Her Majesty is wholly and properly within the competence of the Cook Islands Government and is of such a nature that New Zealand Ministers would not involve themselves in its substance nor subject it to subsequent challenge.

It is interesting to compare this solution with similar issues faced by Australia in the face of a Palace desire to be advised by the Australian Prime Minister only. The Palace view (as expressed by Moore and Heseltine) was also couched in terms of constitutional propriety and the need to avoid any conflict in advice by having only one source.⁷⁷

The Palace's concern about having more than one source of advice was countered by the obvious answer that the issue on which the Crown would be consulted by the States was clearly defined: it was advice on the appointment of the Governor, "one unambiguously identifiable matter",⁷⁸ as indeed were the matters in the case of the Cook Islands.

A "post box" solution to involve the Commonwealth Government in the process of providing States' advice to the Palace was explored in 1983 and rejected. There were a number of complications with this. Should the Australian Prime Minister be put in the position of forwarding advice with which he disagreed? Should the Queen have to accept advice that was not the Prime Minister's true advice? Was he required to offer advice on the advice (thereby ensuing two sources of advice, which was

74 Letter from Thomas Davis (Prime Minister of the Cook Islands) to Robert Muldoon (Prime Minister of New Zealand) (10 June 1981), Archives New Zealand, ABHS 950 306/4/2 part 4 R20766055.

75 Telegram from Wellington to London (24 August 1981), above n 64.

76 Telegram from Wellington to London (24 August 1981), above n 64.

77 Twomey, above n 50, at 161–176.

78 At 145.

exactly what the Palace was looking to avoid)? Moore was apparently keen on this solution, provided the Prime Minister was prepared to take political responsibility for the advice and defend it if it became controversial. However, in the event, the Australian Prime Minister decided he had no wish to be held publicly or politically responsible for the advice of the States to the Queen.⁷⁹

As Australian negotiations with the Palace continued, by 1985, Moore had acknowledged that it might be constitutionally proper for the premier of an Australian state to advise the Queen directly. However, he was concerned at the possibility of "outlandish proposals". As Twomey comments:⁸⁰

This seemed to be the underlying and unexpressed nub of the issue—a concern that State Premiers were more likely to be erratic and outlandish in their behaviour than Prime Ministers.

Twomey adds that Palace concern was partly founded on historical experience, but as the Cook Islands had yet to advise the Queen on the appointment of a Queen's Representative, this concern hardly applied in their case.

C Negotiations to Secure Palace Agreement to the Six Steps, 1981–1982

With the Palace not as "quick to recognise the implications of the Cook Islands constitution" as Quentin-Baxter suggested, it was to take a further eight months of negotiations (to April 1982) to secure the Palace's agreement.

The pressure was on. The Cook Islands Parliament had passed the Cook Islands Constitution Amendment (No 9) Act; it came into force on 5 June 1981. The second stage, the Cook Islands Constitution Amendment (No 10) Act, amending the constitutional provisions for the representative of the Head of State, came into force on 24 March 1982. Following this, the Cook Islands moved to appoint High Commissioner Gaven Donne as the Queen's Representative.

The delay in agreement rested on the Palace insistence that the New Zealand Prime Minister take "substantive responsibility for advice tendered through the six-point procedure".⁸¹ The New Zealand High Commission was instructed to ensure Heseltine was not "left with any misapprehension that this was acceptable".⁸² This suggests that a channel of communication that met the Palace's concern to receive advice from only one source did not address their view of the Cook Islands' status.

So it was not until March 1982 that New Zealand officials concluded that the "point of principle" was resolved, with the process for informal consultation and an exchange of letters with the Palace still to be agreed. New Zealand officials' preference was that informal consultations be with the Cook

⁷⁹ At 131–137.

⁸⁰ At 165.

⁸¹ Telegram from Wellington to London "Cook Islands: Representative of Head of State" (28 August 1981), Archives New Zealand, ABHS 950 306/4/2 part 4 R20766055 (emphasis in original).

⁸² Telegram from Wellington to London, above n 81.

Islands Prime Minister; he was the person who should deal with consultations "aimed at seeking further information or warning of adverse consequences, etc".⁸³ However, it was accepted that the Palace would wish to be assured that this advice had also been discussed with the New Zealand Prime Minister before informal concurrence was sought. Accordingly, a similar procedure was proposed for informal advice. Even the otherwise supportive Quentin-Baxter has commented that "the 'six steps' have become 12, or even more. There appears to be room for some simplification of the agreed process".⁸⁴

Details of the exchange of letters by New Zealand with the Palace have not been released, but it was presumably to address "responsibility": the outstanding issue. In Australia's case, the Queen sought unsuccessfully to have the Australian Prime Minister defend any actions she took on state advice that became controversial.⁸⁵ What New Zealand agreed remains withheld.

While the means of providing advice to the Palace was still under negotiation, matters in the Cook Islands had moved on. By March 1982, the Cook Islands Government had pressed ahead with the appointment of the Queen's Representative and reached step four of the six steps. Patience was wearing thin. The New Zealand Prime Minister directed that, whatever the outcome of discussions with the Palace, New Zealand should move ahead with the final steps of the procedure.⁸⁶

Too late! Before any informal (or formal) consultations took place, Gaven Donne's nomination as the Queen's Representative was announced in Rarotonga on 30 March 1982. Palace confirmation of the six steps followed on 6 April 1982. This was followed by a flurry of catch-up informal, followed by formal, advice to the Palace, while New Zealand officials hoped the Palace had not noticed the appointment was already public.

Since 1982, Queen's (now King's) Representatives have been appointed in the Cook Islands: Sir Tangaroa Tangaroa (1984–1990), Sir Apenera Pera Short (1990–2000), Sir Frederick Goodwin (2001–2013) and Sir Tom Marsters (2013–present). Despite New Zealand's change to a New Zealand honours system from 1996 onwards, the Cook Islands continued with Royal honours. Interestingly, this means they are now promulgated as being bestowed on the recommendation of Cook Islands ministers rather than being a subset of New Zealand's list approved on the advice of New Zealand

83 Telegram from Wellington to London "Cook Islands: Constitutional Amendments: Representative of Head of State" (26 March 1982), Ministry of Foreign Affairs and Trade, 306/4/2 part 5.

84 Quentin-Baxter "The Cook Islands, Niue and Tokelau as Parts of the Realm of New Zealand", above n 4, at 594.

85 Twomey, above n 50, at 134.

86 Telegram from Wellington to London "Cook Islands: Constitutional Amendment: Representative of Head of State" (16 March 1982) Ministry of Foreign Affairs and Trade, 306/4/2, part 5.

ministers.⁸⁷ Presumably, there are occasionally other matters on which the Palace's agreement is required. But the six steps procedure remains extant.

IV THE CONTEMPORARY RATIONALE

Given the history of a questionable Palace constitutional view, Palace intransigence and the compromise of the six steps developed by New Zealand and the Cook Islands under duress to meet Palace concerns, it is remarkable that this procedure has lasted and that arguments to support it have been extended.

As this history shows, the New Zealand Government's policy in 1978 was that it "generally encourages the Cook Islands to deal directly with any other country or entity that is prepared to acknowledge the [Cook's] status as a sovereign country".⁸⁸ The Palace's reluctance to do so initially caused confusion and dismay. As negotiations proceeded, passing advice through the New Zealand Governor-General shifted from being a "courtesy", merely "form not substance" and a "channel to which the Palace is accustomed", to the New Zealand Government agreeing with the Palace that the Governor-General had a role by virtue of the incumbent being the representative of the Sovereign in the Realm of New Zealand, a realm of which the Cook Islands is a part. The six steps procedure has now been described as a new constitutional convention.⁸⁹

Similarly, justification for a New Zealand Government role began to accrue. From New Zealand involvement providing the Palace with assurance that the advice was tendered properly was added assurance it did not conflict with New Zealand interests and advice, to which was added some yet unrevealed deal on where responsibility lay. While the Cook Islands initially received assurances of no New Zealand Government involvement in the content, the New Zealand Government moved to informal and formal involvement in the process. While insisting this did not involve matters of substance, it recognised the opportunity this provided to protect any New Zealand interests. Now added are more far-reaching justifications for New Zealand Government intervention in the substance; not just determining if an appointment is compatible with the relationship between the Cook Islands and New Zealand, but also whether it would be acceptable in the Cook Islands and avoid embarrassment to the Crown.

87 The Gazette (United Kingdom) "Commonwealth New Year and Birthday Honours lists (1981–2025) (13 June 2025)" <www.thegazette.co.uk>.

88 Telegram from Rarotonga to Wellington "Cook Islands: Head of State Functions" (21 November 1978), Archives New Zealand, ABHS 950 31/20/1/13 part 1 R22473725.

89 Quentin-Baxter "The Cook Islands, Niue and Tokelau as Parts of the Realm of New Zealand", above n 4, at 594.

Why has this procedure remained extant, and its justification extended? The six steps procedure was essentially a political fix, and it is to political interests that we must look for reasons for its longevity.

Although the Cook Islands Government has periodically raised the issue with New Zealand, it is not clear what importance it places on it now. It is unlikely that the Cook Islands Government would want the six steps retained but may not see it as a current priority. Nevertheless, the status of the Cook Islands has proved an initial, or in some cases ongoing, complication in its pursuit of international recognition—in the case of United Nations and International Monetary Fund membership, for example.⁹⁰ Emphasis on the Realm of New Zealand, the role of the New Zealand Governor-General and the involvement of New Zealand ministers, with its colonial overtones, may not be the impediment to international recognition that New Zealand citizenship is proving to be, but it is unhelpful and is certainly anomalous.

The Palace may still hold to the view that it cannot receive advice directly. Despite this not tallying with the precedents of the Australian states and devolved administrations, it may have no inclination to extend this precedent further.

It is not a stretch to assume that this position would be consistent with that of the British Government, unlikely to support actions that might suggest greater acceptance of the Cook Islands' statehood. In 2015, the United Kingdom was among the seven governments that did not support the Cook Islands' successful application to join the International Labour Organisation. The British Government has not established diplomatic relations with the Cook Islands.

However, the New Zealand Government is crucial to any resolution. There may be a practical concern. The New Zealand Government may see the Cabinet Office as providing useful, expert administrative support and ensuring protocol is met. New Zealand is well set up to handle relations with the Crown, including having representation in London. Since the appointment of Gaven Donne, there have doubtless been a few protocol missteps along the way. However, if Cabinet Office assistance is so helpful (or indeed imperative), it does not require the six steps, surely, to put this into action.

There may be a sense of diplomatic inertia, similar to the initial accommodation of the Palace's views of the Governor-General's role in the 1980s. It may be that the New Zealand Government is relaxed about the status quo and does not want to expend diplomatic capital on changing the arrangement, assuming the official position of the Palace remains the same.

Alternatively, it may be that the arrangement not only causes New Zealand no grief but, in fact, is in New Zealand's interests; interests that are more compelling now than when spelt out in 1981.

90 Stephen Eliot Smith "Uncharted Waters: Has the Cook Islands Become Eligible for Membership in the United Nations?" (2010) 8 NZJPIIL 169.

Those interests may be minor. It is unlikely that the appointees (or nominees) are themselves of significance to New Zealand. However, New Zealand ministers may see the special relationship as giving them reputational skin in the game. A watching brief on nominees for Queen's Representative and Royal honours may technically provide limited room to act, but it might be seen as a deterrent to the Cook Islands choosing an unsuitable nominee. This, as the Cook Islands Government no doubt feels, displays a lack of trust in its competence and judgement.

More significantly, those interests seem to be part of a broader picture. Retention of the six steps procedure, in its small way, is clearly consistent with the New Zealand government's reluctance to countenance further loosening of ties with the Cook Islands, with its associated diminution of power, while the Cook Islands remains in association with New Zealand. This reluctance is illustrated by recent debates over the Cook Islands exploring dual citizenship, seeking United Nations membership and signing a partnership agreement with China.⁹¹

Whatever the interests involved, it is unclear why these override the Cook Islands' longstanding discomfort with the arrangement. Rather than accruing reasons for its retention, it is now time to move on.

91 Winston Peters, Deputy Prime Minister of New Zealand "A peaceful, prosperous, democratic Pacific" (speech to the Pacific Islands Political Studies Association Conference, Wellington, 19 February 2025). For a Cook Islands view, see Mark Brown, Prime Minister of the Cook Islands "Prime Minister's Constitution address: Celebrating 60 years of self-governance" (Rarotonga, 4 August 2025).